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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

SHARIFA ALI,

Petitioner,

V.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-70126

Agency No. A72-216-714

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Sharifa Ali, a native and citizen of Pakistan, petitions for review of the Board of Immigration Appeals' decision dismissing her appeal from an immigration judge's order pretermining her application for adjustment of status on

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the ground that it lacked jurisdiction pursuant to 8 C.F.R. § 245.1(c)(8). We have jurisdiction under 8 U.S.C. § 1252, and we grant the petition for review.

It is undisputed that Ali is an arriving alien who was proscribed from applying to adjust her status. *See* 8 C.F.R. § 245.1(c)(8) (an arriving alien who is in removal proceedings is ineligible to apply for adjustment of status). This regulation is invalid because it conflicts with the statute. *See Bona v. Gonzales*, 425 F.3d 663 (9th Cir. 2005) (“We . . . hold that 8 C.F.R. § 245.1(c)(8) is invalid.”). Because Ali “was improperly precluded from applying for adjustment of status during her removal proceedings,” *id.*, we grant the petition for review and remand for proceedings consistent with this disposition.

Because we grant relief under *Bona*, we decline to consider petitioner’s other contentions.

PETITION FOR REVIEW GRANTED; REMANDED.